

Assembly Bill 1678 (Negrete McLeod)

Conflict: Future Employers

Version: Amended, 4/3/03

Status: Assembly Appropriations

## Summary of Proposed Bill

The bill broadens application of Government Code section 87407<sup>1</sup>, which prohibits individuals from making decisions with respect to future employers, so that its prohibition includes local officials.

## Existing Law and Regulations

Chapter 7 of the Political Reform Act ("the Act") regulates the broad area of "conflicts of interest." Included in Chapter 7 are various articles dealing with the general conflicts prohibition (Article 1), the disclosure requirements (Article 2), and the adoption of conflict-of-interest codes (Article 3). Article 4 contains the concept known as "revolving door," of which section 87407 is a part. Section 87407 of the Act currently provides that certain types of public officials shall not make, participate in making, nor use the official's position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.<sup>2</sup> Section 87407 explicitly limits its application to three groups:

- 1) state administrative officials
- 2) elected state officers
- 3) designated employees of the Legislature.

Section 87407 was added by Stats. 1990, Ch.84 (SB 1738). Senator Milton Marks, a co-author of SB 1738, stated that the purpose for adding section 87407 and other revolving door provisions was to prevent officials, specifically state regulators, from using their positions to personally benefit:

"...revolving door laws will prevent public officials from using their official positions to negotiate future employment with the very interests the officials are supposed to regulate. A revolving door law, for example, would have, prevented the outrageous spectacle of state regulators negotiating jobs with Lincoln Savings at the very time they were supposed to be regulating Lincoln." (Letter from Milton Marks to David Roberti, April 4, 1990.)

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1 . All references are to the Government Code unless otherwise noted.

2. The Political Reform Act places three restrictions on the activities of state officials who are leaving state service. Two are post-employment, while the third, section 87407, regulates activities of officials who are anticipating leaving state office. Collectively, these are known as the "revolving door" provisions of the Act. The first two, known as the "permanent" and "one-year" bans, are not being amended by the bill.

The revolving door provisions, including section 87407, were linked to the passage of Prop 112/SCA 32. This proposition amended Articles III, IV, and V of the California Constitution and applied only to state officials. Application of the revolving door laws, including section 87407, to local officials was not contemplated when they were added by SB 1738.

While the other portions of the conflict laws, such as disclosure and the conflicts ban itself, are applicable to local officials, none of the "revolving door" provisions apply to local public officials.

## **Discussion and Policy Considerations**

Currently, section 87407 applies only to the following three types of public officials who serve at the state level:

- “State administrative official;” means:

“...every member, officer, employee or consultant of a state administrative agency<sup>3</sup> who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity.” (Section 87400(b). Footnote added.)

- “Elected State Officer;” means:

“...any person who holds an elective state office or has been elected to an elective state office but has not yet taken office. A person who is appointed to fill a vacant elective state office is an elected state officer.” (Section 82021.)<sup>4</sup>

- “Designated employee;” means:

“...any officer, employee, member, or consultant of any agency whose position with the agency;

(a) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual;

(b) Is elective, other than an elective state office;

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<sup>3</sup> “State administrative agency” means every state office, department, division, bureau, board and commission, but does not include the Legislature, the courts or any agency in the judicial branch of government. (Section 87400(a).)

<sup>4</sup> “Elective State Office” means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees' Retirement System, and member of the State Board of Equalization.

(c) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest;

(d) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

“Designated employee” does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.”

The bill deletes reference to these three groups and instead applies the statute's prohibitions to any "public official." That term already is defined in the Act and includes local officials and employees of local governmental agencies:

“...every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government. ‘Public official’ also does not include members of the Board of Governors and designated employees of the State Bar of California, members of the Judicial Council, and members of the Commission on Judicial Performance, provided that they are subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.” (Underline added.)

As noted in Footnote 1 to this memorandum, the bill does not seek to apply the other two revolving door prohibitions (permanent and one-year bans) to local officials. The reason for this distinction is unknown.

**Recommendation:** **Support if amended** to include \$250,000 appropriation.

While AB 1678 does not specifically further any single purpose of the Act, it does address a potential for bias in the context of governmental decisions involving prospective employers.

From a fiscal perspective, the bill will increase workload at the Commission as our advice and enforcement functions will grow proportionate to the already considerable workload associated with local conflicts questions and complaints. For these reasons, staff recommends a position of “support if amended” to include a \$250,000 annual appropriation to fund three full-time positions (1.5 Enforcement Counsels, .5 Legal Counsel, and 1 Political Reform Consultant). Without such an appropriation, this new law would result in fewer enforcement actions in other areas as the Enforcement Division would have to further prioritize its already insufficient resources.